

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DISABLED PATRIOTS OF AMERICA, INC.,	:
a Florida Not-For-Profit Corporation, and	: Case No.: 1:07-cv-06362
BONNIE KRAMER, Individually,	:
	: Judge Joan H. Lefkow
Plaintiffs,	:
v.	:
	: <u>PLAINTIFFS' REPLY IN</u>
TOWN & COUNTRY CHICAGO ASSOCIATES,	: <u>SUPPORT OF MOTION TO</u>
LLC, A Foreign Limited Liability Company,	: <u>COMPEL AND OPPOSITION TO</u>
	: <u>DEFENDANT'S RULE 11</u>
Defendant.	: <u>MOTION TO DISMISS</u>
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EXHIBIT A
PART III

overlap. **Appendix Note**

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with **4.17**; where 6 or more stalls are provided, in addition to the stall complying with **4.17.3**, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with **Fig. 30(d)** and **4.26** shall be provided. Water closets in such stalls shall comply with **4.16**. If water closets are not in stalls, then at least one shall comply with **4.16**.

4.22.5 Urinals. If urinals are provided, then at least one shall comply with **4.18**.

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with **4.19**.

4.22.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, then at least one of each shall be on an accessible route and shall comply with **4.27**.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms required to be accessible by 4.1 shall comply with 4.23 and shall be on an accessible route.

4.23.2 Doors. Doors to accessible bathrooms shall comply with **4.13**. Doors shall not swing into the floor space required for any fixture.

4.23.3* Clear Floor Space. The accessible fixtures and controls required in **4.23.4**, **4.23.5**, **4.23.6**, **4.23.7**, **4.23.8**, and **4.23.9** shall be on an accessible route. An unobstructed turning space complying with **4.2.3** shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap. **Appendix Note**

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4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, then at least one of each shall be on an accessible route and shall comply with **4.27**.

4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with **4.20** or at least one accessible shower that complies with **4.21** shall be provided.

4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with **4.2.4**. **Appendix Note**

4.24 Sinks.

4.24.1 General. Sinks required to be accessible by 4.1 shall comply with 4.24.

4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) above the finish

floor.

4.24.3 Knee Clearance. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

EXCEPTION 1: Sinks used primarily by children ages 6 through 12 shall be permitted to have a knee clearance 24 in (610 mm) high minimum provided that the rim or counter surface is no higher than 31 in (760 mm).

EXCEPTION 2: Sinks used primarily by children ages 5 and younger shall not be required to provide knee clearance if clear floor space for a parallel approach complying with **4.2.4** is provided

4.24.4 Depth. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with **4.2.4** shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see **Fig. 32**).

4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes exposed under sinks shall be insulated or otherwise configured so as to protect against contact. There shall be no sharp or abrasive surfaces under sinks.

4.24.7 Faucets. Faucets shall comply with **4.27.4**. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

4.25 Storage.

4.25.1 General. Fixed storage facilities such as cabinets, shelves, closets, and drawers required to be accessible by **4.1** shall comply with **4.25**.

4.25.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with **4.2.4** that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3* Height. Accessible storage spaces shall be within at least one of the reach ranges specified in **4.2.5** and **4.2.6** (see **Fig. 5** and **Fig. 6**). Clothes rods or shelves shall be a maximum of 54 in (1370 mm) above the finish floor for a side approach. Where the distance from the wheelchair to the clothes rod or shelf exceeds 10 in (255 mm) (as in closets without accessible doors) the height and depth to the rod or shelf shall comply with **Fig. 38(a)** and **Fig. 38(b)**. **Appendix Note**

4.25.4 Hardware. Hardware for accessible storage facilities shall comply with **4.27.4**. Touch latches and U-shaped pulls are acceptable.

4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats required to be accessible by **4.1**, **4.8**, **4.9**, **4.16**, **4.17**, **4.20** or **4.21** shall comply with **4.26**. **Appendix Note**

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see **Fig. 39(a)**, **(b)**, **(c)**, and **(e)**). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see **Fig. 39(d)**). **Appendix Note**

4.26.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

- (1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112N) shall be less than the allowable stress for the material of the grab bar or seat.
- (2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.
- (3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.
- (4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112N) plus the maximum moment from the application of 250 lbf (1112N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.
- (5) Grab bars shall not rotate within their fittings.

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms required to be accessible by **4.1** shall comply with 4.27.

4.27.2 Clear Floor Space. Clear floor space complying with **4.2.4** that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* Height. The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in **4.2.5** and **4.2.6**. Electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor. **Appendix Note**

EXCEPTION: These requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 Alarms.

4.28.1 General. Alarm systems required to be accessible by **4.1** shall comply with 4.28. At a minimum, visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use.

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 dbA or exceeds any maximum sound level with a duration of 60 seconds by 5 dbA, whichever is louder. Sound levels for alarm signals shall not exceed 120 dbA. **Appendix Note**

4.28.3* Visual Alarms. Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:

- (1) The lamp shall be a xenon strobe type or equivalent.
- (2) The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light).
- (3) The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final points of 10 percent of maximum signal.
- (4) The intensity shall be a minimum of 75 candela.
- (5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.
- (6) The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.
- (7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the finish floor, such as auditoriums, devices may be placed around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.
- (8) No place in common corridors or hallways in which visual alarm signalling appliances are required shall be more than 50 ft (15 m) from the signal. **Appendix Note**

4.28.4* Auxiliary Alarms. Units and sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room. Instructions for use of the auxiliary alarm or receptacle shall be provided. **Appendix Note**

4.29 Detectable Warnings.

4.29.1 General. Detectable warnings required by **4.1** and **4.7** shall comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light. **Appendix Note**

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.4 Detectable Warnings at Stairs. (Reserved).

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with **4.29.2**.

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with **4.29.2**.

rooms must be made accessible.) Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such patient toilet/bathroom shall comply with **6.4**.

(b) When patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the altered patient bedrooms shall comply with **6.3**, unless either: a) the number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedrooms that would be required if the percentage requirements of **6.1(1)**, **6.1(2)**, or **6.1(3)** were applied to that department or area; or b) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such toilet/bathroom shall comply with **6.4**.

6.2 Entrances. At least one accessible entrance that complies with **4.14** shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with **4.6.6**.

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with section 4. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a door that complies with **4.13**.

EXCEPTION: Entry doors to acute care hospital bedrooms for in- patients shall be exempted from the requirement in **4.13.6** for maneuvering space at the latch side of the door if the door is at least 44 in (1120 mm) wide.

(2) Each bedroom shall have adequate space to provide a maneuvering space that complies with **4.2.3**. In rooms with two beds, it is preferable that this space be located between beds.

(3) Each bedroom shall have adequate space to provide a minimum clear floor space of 36 in (915 mm) along each side of the bed and to provide an accessible route complying with **4.3.3** to each side of each bed.

6.4 Patient Toilet Rooms. Where toilet/bathrooms are provided as a part of a patient bedroom, each patient bedroom that is required to be accessible shall have an accessible toilet/bathroom that complies with **4.2.2** or **4.2.3** and shall be on an accessible route.

7. BUSINESS, MERCANTILE AND CIVIC.

7.1 General. In addition to the requirements of section 4, the design of all areas used for business transactions with the public shall comply with 7.

7.2 Sales and Service Counters, Teller Windows, Information Counters.

(1) In areas used for transactions where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 in (915mm) in length with a maximum height of 36 in (915 mm) above the finish floor. It shall be on an accessible route complying with **4.3**. Such counters shall include, but are not limited to, counters in retail stores, and distribution centers. The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

(2) In areas used for transactions that may not have a cash register but at which goods or services are

sold or distributed including, but not limited to, ticketing counters, teller stations, registration counters in transient lodging facilities, information counters, box office counters and library check-out areas, either:

(i) a portion of the main counter which is a minimum of 36 in (915 mm) in length shall be provided with a maximum height of 36 in (915 mm); or

(ii) an auxiliary counter with a maximum height of 36 in (915 mm) in close proximity to the main counter shall be provided; or

(iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of: (1) provision of a folding shelf attached to the main counter on which an individual with a disability can write, and (2) use of the space on the side of the counter or at the concierge desk, for handing materials back and forth).

All accessible sales and service counters shall be on an accessible route complying with **4.3**.

(3)* In public facilities where counters or teller windows have solid partitions or security glazing to separate personnel from the public, at least one of each type shall provide a method to facilitate voice communication. Such methods may include, but are not limited to, grilles, slats, talk-through baffles, intercoms, or telephone handset devices. The method of communication shall be accessible to both individuals who use wheelchairs and individuals who have difficulty bending or stooping. If provided for public use, at least one telephone communication device shall be equipped with volume controls complying with **4.31.5**. Hand-operable communications devices, if provided, shall comply with **4.27**.

Appendix Note

(4)* Assistive Listening Systems. (Reserved). **Appendix Note**

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 - 4	1
5 - 8	2
9 - 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with **4.2.1** and maximum adjoining